



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 150708591-5591-01]

RIN 0648-XE043

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to implement annual management measures and harvest specifications to establish the allowable catch levels (i.e. annual catch limit (ACL)/harvest guideline (HG)) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2015, through June 30, 2016. This rule is proposed pursuant to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed 2015-2016 HG for Pacific mackerel is 21,469 metric tons (mt). This is the total commercial fishing target level. This action also proposes an annual catch target (ACT), of 20,469 mt. If the fishery attains the ACT, the directed fishery will close, reserving the difference between the HG (21,469 mt) and ACT as a 1,000 mt set-aside for incidental landings in other CPS fisheries and other sources of mortality. This proposed rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

DATES: Comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on this document identified by NOAA-NMFS-2015-0096, by any of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2015-0096*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; Attn: Joshua Lindsay.
- **Instructions:** Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the report “Pacific Mackerel (*Scomber japonicus*) Stock Assessment for USA Management in the 2015-16 and 2016-2017 Fishing Years” may be obtained from the West Coast Regional Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: During public meetings each year, the estimated biomass for Pacific mackerel is presented to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fishery are reviewed and discussed. The biomass estimate is then presented to the Council along with the recommended overfishing limit (OFL) and acceptable biological catch (ABC) calculations from the SSC, along with the calculated ACL, HG and ACT recommendations, and comments from the Team and Subpanel. Following review by the Council and after reviewing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS. NMFS manages the Pacific mackerel fishery in the U.S. EEZ off the Pacific coast (California, Oregon, and Washington) in accordance with the FMP. Annual specifications published in the **Federal Register** establish the allowable harvest levels (i.e. OFL/ACL/HG) for each Pacific mackerel fishing year. The purpose of this proposed rule is to implement the 2015-2016 ACL, HG, ACT and other annual catch reference points, including OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific mackerel in the U.S. EEZ off the Pacific coast.

The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific mackerel fishery based on the annual specification framework and control

rules in the FMP. These control rules include the HG control rule, which in conjunction with the OFL and ABC rules in the FMP, are used to manage harvest levels for Pacific mackerel, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* According to the FMP, the quota for the principal commercial fishery is determined using the FMP-specified HG formula. The HG is based, in large part, on the current estimate of stock biomass. The annual biomass estimates are an explicit part of the various harvest control rules for Pacific mackerel, and as the estimated biomass decreases or increases from one year to the next, the resulting allowable catch levels similarly trend. The harvest control rule in the CPS FMP is $HG = [(Biomass - Cutoff) * Fraction * Distribution]$ with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific mackerel. For the 2015-2016 management season this is 120,435 mt.
2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 18,200 mt.
3. *Fraction.* The harvest fraction is the percentage of the biomass above 18,200 mt that may be harvested.
4. *Distribution.* The average portion of the Pacific mackerel biomass estimated in the U.S. EEZ off the Pacific coast is 70 percent and is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

At the June 2015 Council meeting, the Council adopted the “Pacific Mackerel (*Scomber japonicus*) Stock Assessment for USA Management in the 2015-16 and 2016-2017 Fishing Years” completed by NMFS Southwest Fisheries Science Center and the resulting Pacific

mackerel biomass estimate for use in the 2015-2016 fishing year of 120,435 mt. Based on recommendations from its SSC and other advisory bodies, the Council recommended and NMFS is proposing, an OFL of 25,291 mt, an ABC and ACL of 23,104 mt, a HG of 21,469 mt, and an ACT of 20,469 mt for the fishing year of July 1, 2015, to June 30, 2016. Additionally, the Council also adopted and recommended harvest specifications for the 2016-2017 fishing year; however, currently NMFS is only proposing to implement the annual harvest measures for the 2015-2016 fishing year. A subsequent rule will be published later in the year that will propose the Council's recommendations for the 2016-2017 fishing year.

Under this proposed action, upon attainment of the ACT, the directed fishing would close, reserving the difference between the HG and ACT (1,000 mt) as a set aside for incidental landings in other CPS fisheries and other sources of mortality. For the remainder of the fishing year incidental landings would also be constrained to a 45-percent incidental catch allowance when Pacific mackerel are landed with other CPS (in other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel), except that up to 3 mt of Pacific mackerel could be landed incidentally without landing any other CPS. Upon attainment of the HG (21,469 mt), no retention of Pacific mackerel would be allowed in CPS fisheries. In previous years, the incidental set-aside established in the mackerel fishery has been, in part, to ensure that if the directed quota for mackerel was reached that the operation of the Pacific sardine fishery was not overly restricted. There is no directed Pacific sardine fishery for the 2015-2016 season, therefore the need for a high incidental set-aside is reduced. The purpose of the incidental set-aside and the allowance of an incidental fishery is to allow for restricted incidental landings of Pacific mackerel in other fisheries, particularly other CPS fisheries, when

the directed fishery is closed to reduce potential discard of Pacific mackerel and allow for continued prosecution of other important CPS fisheries.

The NMFS West Coast Regional Administrator would publish a notice in the **Federal Register** announcing the date of any closure to either directed or incidental fishing.

Additionally, to ensure the regulated community is informed of any closure NMFS would also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

Detailed information on the fishery and the stock assessment are found in the reports “Pacific Mackerel (*Scomber japonicus*) Stock Assessment for USA Management in the 2015-16 Fishing Year” and “Pacific Mackerel Biomass Projection Estimate for USA Management (2015-16)” (see **ADDRESSES**).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the Assistant Administrator, NMFS, has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866 because they contain no implementing regulations.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

On June 12, 2014, the Small Business Administration (SBA) issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33467). The rule increased the size standard for Finfish Fishing from \$19.0 to 20.5 million, Shellfish Fishing from \$ 5.0 to 5.5 million, and Other Marine Fishing from \$7.0 to 7.5 million. 78 FR 33656, 33660, 33666 (See Table 1). NMFS conducted its analysis for this action in light of the new size standards.

As stated above, the SBA now defines small businesses engaged in finfish fishing as those vessels with annual revenues of or below \$20.5 million. Under the former, lower size standards, all entities subject to this action in previous years were considered small entities, and under the new standards, as described below, they all would continue to be considered small.

The small entities that would be affected by the proposed action are those vessels that harvest Pacific mackerel as part of the West Coast CPS purse seine fleet. The CPS FMP and its implementing regulations requires NMFS to set an OFL, ABC, ACL, HG and ACT for the Pacific mackerel fishery based on the harvest control rules in the FMP. These specific harvest control rules are applied to the current stock biomass estimate to derive these catch specifications, which are used to manage the commercial take of Pacific mackerel. A component of these control rules is that as the estimated biomass decreases or increases from one year to the next, so do the applicable quotas. For the 2015-2016 Pacific mackerel fishing season NMFS is proposing an OFL of 25,291 metric tons (mt), an ABC and ACL of 23,104 mt, an HG of 21,469 mt and an ACT, which is the directed fishing harvest target, of 20,469 mt. These catch specifications are based on a biomass estimate of 120,435 mt.

Pacific mackerel harvest is one component of CPS fisheries off the U.S. West Coast, which primarily includes the fisheries for Pacific sardine, northern anchovy and market squid.

Pacific mackerel are principally caught off southern California within the limited entry portion (south of 39 degrees N. latitude; Point Arena, California) of the fishery. Currently there are 58 vessels permitted in the Federal CPS limited entry fishery off California of which about 25 to 39 vessels have been annually engaged in harvesting Pacific mackerel in recent years (2009-2013). For those vessels that caught Pacific mackerel during that time, the average annual per vessel revenue has been about \$1.25 million. The individual vessel revenue for these vessels is well below the SBA's threshold level of \$20.5 million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule has an equal or similar effect on all of these small entities, and therefore will impact a substantial number of these small entities in the same manner.

NMFS used the ex-vessel revenue information for a profitability analysis, as the cost data for the harvesting operations of CPS finfish vessels was limited or unavailable. For the 2014-2015 fishing year, the maximum fishing level was 29,170 mt and was divided into a directed fishing harvest target (ACT) of 24,170 mt and an incidental set-aside of 5,000 mt. Approximately 3,611 mt was harvested in 2014-2015 fishing season with an estimated ex-vessel value of approximately \$940,000. The maximum fishing level for the 2015-2016 Pacific mackerel fishing season is 21,469 mt, with an ACT of 20,469 mt and an incidental set-aside of 1,000 mt. If the fleet were to take the entire 2015-2016 ACT, the potential revenue to the fleet would be approximately \$4.7 million (based on average ex-vessel price of \$230 per mt during 2013-2014 and 2014-2015), which is the same as what the estimated potential revenue was last year for the 2014-2015 season (which was based on average ex-vessel price of \$193 per mt during 2012-2013 and 2013-2014). However, this result will depend greatly on market forces within the fishery, and on the regional availability of the resource to the fleet and the fleets'

ability to find schools of Pacific mackerel. The annual average U.S. Pacific mackerel harvest over the last decade (2001-2013) and in recent years (2009-2013) has been about 4,900 mt and 4,500 mt, respectively. In those periods, the landings have not exceeded 11,500 mt. The annual average landings during 2001-2013 and 2009-2013 were only about 20% and 15% of the annual average HGs, respectively. As a result, although this year's ACT represents a decrease compared to the previous fishing season, it is highly unlikely that the ACT proposed in this rule will limit the potential profitability to the fleet from catching Pacific mackerel. Accordingly, vessel income from fishing is not expected to be altered as a result of this rule as it compares to recent catches in the fishery, and specifically the fishery under the previous season's regulations.

Additionally, revenue derived from harvesting Pacific mackerel is typically only one factor determining the overall revenue for a majority of the vessels that harvest Pacific mackerel; as a result, the economic impact to the fleet from the proposed action cannot be viewed in isolation. From year to year, depending on market conditions and availability of fish, most CPS vessels supplement their income by harvesting other species. Many vessels in California also harvest anchovy, sardine, and in particular market squid, making Pacific mackerel only one component of a multi-species CPS fishery. For example, in recent years the annual total fleet revenue from Pacific mackerel alone has ranged from about \$200,000 to \$1.5 million with average fleet revenue of about \$800,000 (or \$23,422 per vessel). Thus, the revenue from Pacific mackerel in the CPS fleet is a very small fraction of the revenue whether from CPS species or all fish species. The revenue from Pacific mackerel constitutes about 1.98% and 1.95 % of the total revenue from CPS species and all fish species, respectively. However, as a result of the closing of the directed Pacific sardine fishery for the 2015-2016 fishing year, there is the potential for

more effort to be shifted to Pacific mackerel resulting in increased landings and therefore increased revenue from mackerel.

These vessels typically rely on multiple species for profitability because abundance of mackerel, like the other CPS stocks, is highly associated with ocean conditions and different times of the year, and therefore are harvested at various times and areas throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same time; therefore, as abundance levels and markets fluctuate, it has necessitated that the CPS fishery as a whole rely on a group of species for its annual revenues.

Pursuant to the Regulatory Flexibility Act and the SBA's June 20, 2013 and June 14, 2014 final rules (78 FR 37398 and 79 FR 33647, respectively), this certification was developed for this action using the SBA's revised size standards. NMFS considers all entities subject to this action to be small entities as defined by both the former, lower size standards and the revised size standards. Because each affected vessel is a small business, this proposed action is considered to equally affect all of these small entities in the same manner.

Based on the disproportionality and profitability analysis above, the proposed action, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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